Final v.1

Participation Agreement

Between

ZESCO LIMITED

and

the Market Participant

[Insert Date]

This Participation Agreement is made on the *[Insert day…….]* day of [*Insert month…….]* Two Thousand and *[Insert Year……]*

BETWEEN:

a) *[Insert* Full Legal *Name of Market Participant*], a company incorporated in accordance with the Companies Act No.10 of 2017 of the laws of Zambia with registration number *[Insert Registration Number…]* whose registered office is at *[Insert Physical Address………......]* (the "Market Participant" which expression where the context so admits shall be deemed to include all its successors and permitted assigns) of the one part; and

b) *ZESCO Limited*, a company incorporated under the Companies Act No.10 of 2017 of the Laws of Zambia, designated as the System Operator, pursuant to the Electricity Act No. 11 of 2019 and the Open Access Regulations, with its registered office at *[Insert Physical Address……]* (the "System Operator" which expression where the context so admits shall be deemed to include all its successors and permitted assigns) of the other part.

Collectively referred to as the "Parties".

WHEREAS:

A. The Energy Regulation Board ("ERB") has issued the Market Guidelines for the Open Access Electricity Market in Zambia ("Market Guidelines"), which establish the framework for the operation of a competitive electricity market.

B. The Market Participant holds the requisite licence from the ERB (if applicable) and is registered with the MOU to participate in the Open Access Market.

C. The System Operator, in accordance with the Open Access Regulations, has been assigned additional functions in relation to Open Access. In performing these additional functions, the System Operator has established a ringfenced Market Operator Unit (MOU) which is responsible for the operations of the Open Access Market and acts as the single operator of the said Market;

D. The Market Participant wishes to participate in the Open Access Market, and the System Operator is responsible for facilitating such participation in accordance with the Governing Documents, and this Agreement.

E. This Agreement sets out the terms governing the participation of the Market Participant in the Open Access Market.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

Definitions:

1.1. Unless the context otherwise requires, where definitions are stated specifically in this Agreement as being defined in a Governing Document, in the event any such definition in the relevant Governing Document is amended, such amended definition shall, from the effective date of the amendment, be deemed to apply to this Agreement until this Agreement is expressly amended to reflect such change.

1.2. References in this Agreement to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time, and to all annexes, schedules, attachments and supplements which form part of such document;

"Balance Responsible Party" or "BRP"	means a Market Participant that assumes responsibility for maintaining real-time balancing at specified metering points by submitting day-ahead forecasts and trading nominations, and is held accountable for any imbalances through the Balancing Mechanism.
"Business Day"	means any day other than a Saturday, Sunday, or public holiday in the Republic of Zambia.
"Contestable Consumer"	means a Market Participant who is eligible to purchase electricity from any Eligible Seller and includes an Embedded Consumer, Mining Consumer, Industrial Consumer, End-use Consumer, Commercial Retailer, Exporter, Battery Energy Storage System Operator and Intermediary Power Trader.
"Electricity Act"	means the Electricity Act, No. 11 of 2019.
"Insolvency Event"	means, subject to the provisions of the Corporate Insolvency Act 2017 as (applicable) in respect of any person and except for the purpose of amalgamation, reorganisation or reconstruction (provided that such amalgamation, reorganisation or reconstruction does not affect the ability of the amalgamated, reorganised or reconstructed entity to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution for its winding up; (b) the admission in writing of its inability, generally, to pay its debts as they become due; (c) the appointment of a provisional manager, receiver, trustee, liquidator, administrator, business rescue administrator or similar official over that person or a material portion of its assets; (d) the making by any court with competent jurisdiction of a winding up order; (e) the making of any arrangement or scheme with its creditors; (f) any moratorium, stay or limitation of creditors' rights

	or interim or provisional supervision by the court (or other competent authority) arising in respect of that person; (g) the occurrence of any similar or analogous circumstance or procedure under the laws of any relevant jurisdiction.
'Suspension Order'	has the meaning assigned to this term in the Market Guidelines being an order issued pursuant to Chapter 2, section 10.5 of the Market Guidelines suspending all or part of the rights of a Market Participant to participate in the Open Access Market.
"Balancing Agreement"	means the agreement between the System Operator and a Balance Responsible Party and or Balancing Party that establishes the terms and conditions for maintaining real-time balancing at specified metering points in the Zambian electricity grid, including the responsibilities, obligations, performance standards, and any applicable sanctions and remedies for a Balance Responsible Party and/or Balancing Party.
"Balancing Mechanism"	has the meaning assigned to this term in the Market Guidelines, being, the operational framework tool used by the System Operator to balance electricity supply and demand in real-time by calling upon additional generation or consumption, or reducing generation or consumption, in order to maintain system balance on a minute-by-minute and second-by-second basis.
"Change in Law"	means the occurrence of any of the following events after the date of this Agreement: the enactment of any new Laws of Zambia; the repeal, modification, or re-enactment of any existing Laws of Zambia (including, for the avoidance of doubt, tax laws); the commencement or entry into effect of any Laws of Zambia that were enacted but not yet effective as at the date of this Agreement; or a change in the interpretation or application of any Laws of Zambia by any court or administrative authority.
"Distribution Network Service Provider"	has the same meaning assigned to this term in the Electricity Act being a licensee responsible for operating, maintaining and developing a distribution system in an area and, where applicable, the distribution system's interconnection with other systems.
"EAPP"	means the East African Power Pool;
"Effective Date"	means the date on which this Agreement has been signed by both Parties. If the Parties do not sign this Agreement on the same date, the Effective Date shall be the date of the last signature.
"Eligible Seller	has the same meaning assigned to this term in the Market Guidelines, being a Supplier or licensee that holds a Licence to trade in electricity as defined in the Electricity Act, including but not limited to an independent power producer, importer, embedded power producer, battery energy storage system operator and intermediary power traders.
"Energy Regulation Act"	means the Energy Regulation Act, Act No. 12 of 2019.

"ERB"	means the Energy Regulation Board established under the Energy Regulation Act.
"Governing Documents"	means, collectively, the Electricity Act, the Energy Regulation Act, the Open Access Regulations, the Market Guidelines, the Grid Code, the System Operator Guidelines, and any other rules, procedures, or codes issued by the ERB.
"Grid Code"	means the Electricity (Grid Code) Regulations, S.I. 79 of 2013.
"Laws of Zambia"	means any national, or local law, order, rule, regulation, by-law, statutory order, statutory reversionary order, executive order, decree, policy, judicial decision, notification, administrative decision or other similar directive made pursuant thereto, or legally binding instruction, guideline, code or standard issued by an executive, legislative, judicial or administrative entity, having the force of lawin Zambia, including in relation to any Tax, as any of them may be amended from time to time.
"Licence"	means a licence issued by the ERB under the Energy Regulation Act;
"Market Guidelines"	means the Open Access Market Guidelines for the Electricity Sub-Sector, 2025.
"Market Operator Unit"	has the same meaning assigned to this term in the Market Guidelines being the Ringfenced unit under the System Operator which shall be responsible for the operations of the Markets in accordance with the Market Guidelines and shall also act as the single operator of the Markets.
"Market Participant""	has the meaning assigned to this term in the Market Guidelines, being an Open Access User who has met the conditions of regulation 16 of the Open Access Regulations and includes a Contestable Consumer or Public Service Trader (PST) that is registered or admitted in accordance with the Market Guidelines to participate into the Market.
"Nomination"	has the same meaning assigned to this term in the Market Guidelines, being the formal declaration of a Market Participant of a quantity of power to be delivered or taken during specific time periods
"Open Access Management System"	has the meaning assigned to this term in the System Operator Guidelines, being the System Operator's electronic communication system for the publication of Information by the System Operator and the submission of Information to the System Operator by Participants.
"Open Access Market"	has the meaning assigned to this term in the Market Guidelines, being the Zambian electricity market covering the short-term, medium-term and long-term competitive electricity market that includes the market segments described within the Market Guidelines.
"Open Access Regulations"	means the Electricity (Open Access) Regulations, S.I No.40 of 2024.

"Public Sector Trader "	has the meaning assigned to this term in the Market Guidelines being the ringfenced unit within ZESCO Limited that holds a license to trade in electricity and is responsible for managing ZESCO-owned generation and ZESCO Power Purchase Agreements (entered into before or after the effective date,) that are part of the Regulatory Asset Base and backstopped by Government. It is also responsible for trading and supplying non-retail consumers directly through Power Supply Agreements and retail consumers through Distribution Network System Providers .
"Regional Markets"	means any monthly forward physical markets, weekly forward physical markets, day-ahead markets, intra-day markets and balancing markets, operated by Regional Pools on behalf of their members;
"Regional Operator	has the meaning assigned to this term in the Grid Code being, means an entity, subordinate to the SO and independent from other market participants responsible for short-term reliability of the IPS, which is in charge of controlling and operating part of the TS in real time.
"Regional Pools"	means SAPP, EAPP and any other regional power pool where Market Participants have access to trade;
"SAPP Markets"	means any forward physical market (monthly or weekly), day-ahead market, intra-day market, balancing market, or any future market operated by SAPP on behalf of its members.
"SAPP Rules"	means the set of operational, market, and compliance rules issued by SAPP, including but not limited to the SAPP Inter-Governmental Memorandum of Understanding, the SAPP Inter-Utility Memorandum of Understanding, the SAPP Agreement Between Operating Members, the SAPP Operating Guidelines, the SAPP Market Rules, and any directives or amendments adopted by SAPP, as applicable to SAPP market participants and system operators.
"SAPP"	means the Southern African Power Pool.
"Supplier"	has the meaning assigned to this term in the Electricity Act, being a person who supplies electricity
"System Operator"	has the meaning assigned to this term in the Electricity Act, being an entity responsible for the short term reliability of an interconnected power system, which is in charge of controlling and operating the transmission system and dispatching generation or balancing the supply and demand in real time in a non-discriminatory manner.
"Trading Guidelines"	has the meaning assigned to this term in the Market Guidelines being the detailed guidelines for trading on a Market defined and maintained by the Market Operator Unit, containing but not limited to, timings and detailed data requirements for the Market Participants as well as providing other details on the trading operation;

Priority of Documents: : In the event of any conflict or inconsistency between the Governing Documents, any other Laws of Zambia, Licence conditions and this Agreement such conflict shall be resolved in the following order of priority:

a) Laws of Zambia (including the Electricity Act and the Energy Regulation Act and Open Access Regulations);
b) The Market Participant's Licence conditions issued by ERB;
c) Market Guidelines;
d) System Operator Guidelines
e) Other procedures and guidelines issued by the ERB or the System Operator pursuant to the Governing Documents.
f) This Agreement;

If a provision of a document higher in the order of precedence is inconsistent with a provision of a document lower in the order of precedence, then the higher provision prevails, but only to the extent of the inconsistency.

Abbreviations

ce Responsible Party

oution Network Service Provider

y Regulatory Board

onnected Power System

t Operator Unit

Purchase Agreement

Supply Agreement

Service Trader

atory Asset Base

ern Africa Power Pool

ABOM	Agreement Between Operating Members
IG MOU	Inter-Governmental Memorandum of Understanding
	n Operator
	nission System

2. TERM

This Agreement shall come into effect on the Effective Date and shall continue in full force and effect until terminated in accordance with Clause 12

3. PARTICIPATION IN THE OPEN ACCESS MARKET

3.1 **Conditions Precedent:** The Market Participant's participation is conditional upon the following:

a) The Market Participant meeting all the eligibility and contestability criteria of the Market Guidelines and Open Access Regulations granting access to the Open Access Market.

b) obtaining and maintaining a valid licence from the ERB (where applicable) for its intended Market activities.

c) Registration with the MOU

d) Payment of a non-refundable admission fee determined by the Market Operator Unit and approved by the ERB

3.2 **Consent to be Bound:** By executing this Agreement, the Market Participant acknowledges that it has read and understood the Governing Documents and agrees to be bound by them, as amended from time to time.

4. OBLIGATIONS OF THE PARTIES

4.1 Market Participant

The Market Participant shall:

a) If applicable, hold and maintain a valid licence issued by the ERB.

b) Register bilateral agreements with the Market Operating Unit as required within the timeframe prescribed in the Trading Guidelines.

c) Submit accurate and timely Nomination(s) for bilateral trades to the Market Operator Unit as required within the timeframe prescribed in the Trading Guidelines.

d) Submit day-ahead forecasts and trading Nominations to the System Operator for every delivery day in accordance with the data specifications and timings set out in the Trading Guidelines

e) Ensure that all Nominations are completed in full and are accurate. Invalid or faulty Nominations shall be rejected by the Market Operator Unit.

f) Ensure that the volumes of energy nominated do not exceed the licenced capacity (if applicable) of the Market Participant in any one hour.

g) For Market Participants who wish to access the SAPP Market through the Gateway mechanism provided by the MOU in accordance with the Trading Guidelines, provide the required financial security (collateral)

h) Adhere to SAPP Rules when participating in SAPP Markets through the MOU.

i) Notify the System Operator of any changes to registered information.

j) Pay administrative fees and charges to the System Operator as approved by the ERB.

k) Settle all financial obligations owed to the System Operator within thirty (30) days of receipt of the invoice.

l) Comply with all obligations of the Market Participants under the Market Guidelines including all transparency and disclosure obligations.

4.2 System Operator

The System Operator shall:

a) Manage collateral accounts for the Market Participant, if the Market Participant is trading on the SAPP Markets through the MOU.

b) Levy and collect approved administration fees from the Market Participant

c) Publish trading timelines, gate closure details, and other relevant market information on the Open Access Management System.

5. AMENDMENTS TO THIS AGREEMENT

5.1 Subject to clause 5.2 below, this Agreement may be amended or modified in writing and duly executed by both Parties, which writing shall state specifically that it is intended to amend or modify this Agreement. No provision of this Agreement shall be deemed waived by course of conduct unless such waiver is made in writing signed by both Parties stating that it is intended specifically to modify this Agreement, nor shall any course of conduct that constitutes a breach of this Agreement operate or be construed as a waiver of any subsequent breach of this Agreement, whether of a similar or dissimilar nature.

5.2 5.1This Agreement shall be deemed automatically amended to reflect any amendments to the Market Guidelines approved by ERB and published in the Government Gazette, effective five (5) Business Days after publication or such other date as may be specified in the amended Market Guidelines, without requiring execution of a separate amendment to this Agreement.

5.3 The Parties shall cooperate to implement such amendments, and the SO shall notify the Market Participant of any such amendments within two (2) Business Days of publication.

5.4 Notwithstanding the automatic incorporation of Market Guidelines amendments, if any such amendment materially and adversely affects the Market Participant's rights or increases the Market Participant's obligations under this Agreement, the Market Participant may request a meeting with the SO within thirty (30) Business Days of notification to discuss implementation and any necessary transitional arrangements.

6. CONFIDENTIALITY

6.1 Subject to the provision of Clause 4.2 (c), each Party shall treat as strictly confidential and not disclose or use (other than solely for the purposes of the Market participation) any information or data disclosed to it by the other Party in connection with this Agreement (the “Confidential Information”).

6.2 For the purposes of this Clause, the term “Confidential Information” shall not include information which:

a) at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain otherwise than as a result of a breach of this Clause;

b) is required by law or appropriate regulatory/constitutional authority to be disclosed to any person who is authorised by law to receive the same;

c) the Party receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this Clause; or

d) was or is obtained from a third party who is free to divulge the same and which was or is not obtained under any obligation of confidentiality.

e) For the SO, for purposes of disseminating aggregate or anonymized information to ensure market transparency while upholding confidentiality obligations.

6.3 Clause 6.2 shall not prohibit disclosure or use of any Confidential Information if and to the extent that:

a) the other Party has given prior written approval to the disclosure or use;

b) the disclosure or use is required for the purpose of any judicial or arbitral proceedings arising out of this Agreement or in order to enable a determination to be made by an expert or adjudicator;

c) the disclosure is made to any professional advisors, shareholders (direct or indirect), agents, consultants, contractors, potential transferees or purchasers of the interests of a shareholder (direct or indirect), insurers, any lenders, actual or potential financiers of either Party or one of its affiliates or any of their advisors on terms that such recipients undertake to comply with the provisions of this Clause in respect of the Confidential Information as if they were a party to this Agreement; or

d) the disclosure is required by law, any governmental authority or regulatory body or any recognised exchange upon which the share capital of the Party or any affiliate of the Party making the disclosure is proposed to be, from time to time, listed or dealt in.

e) The obligation to observe confidentiality shall survive termination or expiry of this Agreement.

7. DATA PROTECTION AND PRIVACY

The Parties shall comply with the Data Protection Act No. 3 of 2021 and any other applicable Laws of Zambia relating to data protection and privacy in relation to any data processed in connection with this Agreement, including but not limited to customer information, trading data, and operational records. Each Party shall implement appropriate technical and organisational measures to ensure the security of data and shall notify the other Party promptly of any data breach that may affect the other Party's interests.

8. REPRESENTATIONS AND WARRANTIES

8.1. Each Party represents and warrants to the other that:

a) It is duly incorporated and has the power to enter into and perform its obligations under this Agreement.

b) It has obtained all necessary Licences, consents, and authorisations to execute this Agreement and perform its obligations hereunder.

8.2. The Market Participant represents that it meets the eligibility and contestability criteria set out in the Market Guidelines as required for Market Participants participating in the Open Access Market, and warrants that it shall maintain compliance with such criteria throughout the term of this Agreement.

9. DISPUTE RESOLUTION

9.1. For purposes of this Agreement, a "Dispute" means any claim, dispute, or difference of whatever nature between the Parties howsoever arising under, out of, or in relation to this Agreement, including any disagreement regarding the interpretation, performance, breach, or termination of this Agreement.

9.2. Where the System Operator reasonably determines that the resolution of a Dispute may impact a third party who has not been served a Notice of Dispute, the System Operator will inform that third party of the existence, nature and progress of the Dispute, while maintaining the confidentiality of the Disputing Parties.

9.3. A Party must notify the other Party in writing of any Dispute by way of a Notice of Dispute within ten (10) Business Days of that Party having become aware of the circumstances giving rise to the Dispute.

9.4. The Notice of Dispute shall set out in reasonable detail the nature of the Dispute, the specific issues involved, and the relief sought. A copy of the Notice of Dispute shall be sent to ERB.

9.5. The obligations of the Parties under this Agreement (including payment of undisputed invoice amounts and amounts relating to delivered energy) shall not be affected by reason of the existence of a Dispute, save as provided for in any determination of a Court of competent jurisdiction. Where a Dispute relates to charges exceeding USD 50,000 [or the

ZMW or ZAR equivalent calculated at the prevailing Bank of Zambia exchange rate] or involves allegations of material breach of this Agreement, the disputing Party may apply to place disputed amounts in escrow pending resolution of the Dispute.

9.6. It is intended that the dispute resolution process set out in or implemented in compliance with the Market Guidelines and described in detail in the following paragraphs should, to the extent possible:

a) be simple, quick, and inexpensive;

b) preserve or enhance the relationship between the Parties;

c) resolve Disputes and allow for the continuing and proper operation of this Agreement and the Open Access Market having regard to the objectives of this Agreement and the Market Guidelines;

d) resolve Disputes on an equitable basis in accordance with the provisions of this Agreement having regard to the objectives of this Agreement and the Market Guidelines;

e) take account of the skills and knowledge required for the relevant procedure; and

f) encourage resolution of Disputes without formal legal representation or reliance on legal procedures.

9.7. Where a Notice of Dispute has been served, a representative of each of the Parties, each with authority to resolve the Dispute, must meet within ten (10) Business Days of the date of the Notice of Dispute to seek in good faith to resolve the Dispute. The Parties shall negotiate in good faith and attempt to agree on a resolution.

9.8. Any Dispute which has not been resolved amicably by the Parties within ten (10) Business Days of meeting in accordance with Clause **9.7** above shall be finally settled by arbitration administered by the Lusaka International Arbitration Centre (LIAC) in accordance with the LIAC Arbitration Rules. The decision of the arbitrator shall be final and binding on the Parties. The Parties shall jointly appoint an arbitrator. Should the Parties fail to appoint an arbitrator within fourteen (14) Business Days of notice requiring them to appoint an arbitrator, the LIAC shall appoint the arbitrator. The seat and place of arbitration shall be Lusaka, Zambia. The language of the arbitration shall be English.

9.9. The Parties shall continue to perform all of their obligations under this Agreement during the pendency of any Dispute, including the fulfilment of payment obligations as they fall due.

9.10. Interim Relief and Expedited Process: Nothing in this Clause 9 shall preclude either Party from seeking interim or conservatory measures from a court of competent jurisdiction where urgent circumstances require immediate judicial intervention. Operational disputes (including metering and scheduling disputes) may be subject to an expedited dispute resolution process as detailed in the relevant procedures, including a "pay now, dispute later" mechanism to prevent cash-flow disruptions.

10. FORCE MAJEURE

10.1. "Force Majeure Event" means, in relation to a Party, any event or circumstance, or combination of events or circumstances: (a) that is beyond the reasonable control of the Party; (b) that adversely affects the performance by the Party of its obligations under this Agreement; and (c) the adverse effects of which could not have been foreseen and prevented, overcome, remedied or mitigated in whole or in part by the Party through the exercise of reasonable diligence and care.

10.2. A Force Majeure Event shall include any of the following:

a) any strike, work to rule, go-slow, lockout, or other labour disturbance or industrial action which is widespread or nationwide;

b) any act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, blockade, embargo, revolution, insurrection, civil strife, civil commotion, sabotage, explosion, or act of terrorism;

c) explosions, fires, blowouts, or chemical contamination, other than those resulting from an act of war; or a Natural Force Majeure Event including lightning, fire, earthquake, flood, drought, storm, cyclone, typhoon, tornado, epidemic, plague, radioactive contamination, ionising radiation, or nuclear explosion; and

d) a Change in Law which renders performance this Agreement illegal or impossible, but excludes any Change in Law that falls within the scope of Clause 10.4 (Change in Law Protection).

10.1. For the avoidance of doubt, Force Majeure shall not excuse the payment of money due under this Agreement for energy actually delivered. Where a Force Majeure Event prevents a Party from performing its obligations under this Agreement, payment obligations shall be suspended to the extent that such payment relates to obligations not performed due to the Force Majeure Event.

Change in Law Protection

10.2. Where a Change in Law:

a) increases the Market Participant's annual costs of participation in the Open Access Market by more than 5%; or
b) imposes new technical requirements requiring capital expenditure exceeding USD 100,000 or the ZMW equivalent calculated at the prevailing Bank of Zambia exchange rate,

the Parties shall meet within thirty (30) Business Days to negotiate in good faith an equitable adjustment to the terms of this Agreement, including price adjustments, cost-sharing mechanisms[, or termination rights with compensation]. Any such adjustments agreed between the Parties shall be subject to the approval of the ERB

Notification, Mitigation and Consequences of Force Majeure:

10.3. If any Party is affected by a Force Majeure Event (the "Affected Party"), the Affected Party shall be excused from the performance of such obligations (other than any obligation to pay money in respect of performance actually rendered notwithstanding the Force Majeure Event) during the existence of such Force Majeure Event and shall not be responsible for any losses suffered by the other Party as a result of such suspended performance, and any performance deadline that the Affected Party is obliged to meet under this Agreement shall be extended day-for-day so long as the Force Majeure Event continues (but only to the extent that such failure or delay would not have been experienced by the Affected Party had the Force Majeure Event not occurred). Payment obligations shall be suspended to the extent that such payment relates to obligations not performed due to the Force Majeure Event. No payment shall be due for obligations not performed by either Party as a direct result of the Force Majeure Event.

10.4. The Affected Party shall, as soon as reasonably practicable after a Force Majeure Event has occurred (but in any event no later than ten (10) Business Days after it has occurred), give notice to the other Party of the Force Majeure Event and shall keep the other Party informed of subsequent developments as they occur. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action taken or proposed to mitigate its effect. Similarly, a written notice of the restoration of normal conditions shall be given within ten (10) Business Days of the cessation of the Force Majeure Event.

10.5. If such Force Majeure Event continues for longer than six (6) months from the date of the notice referred to in Clause **10.4**, then the Parties shall seek to agree on the way forward, and if the Parties fail to reach a mutually satisfactory solution within fourteen (14) days of the commencement of such discussion, either Party may refer the matter to the ERB for resolution. The ERB shall notify the Parties of its decision within thirty (30) days.

10.6. Notwithstanding the foregoing, the following events or circumstances shall not constitute a Force Majeure Event:

a) the failure or inability to make payments that are due under this Agreement, except where a Dispute exists and the paying Party is expressly permitted to withhold such payment under the terms of this Agreement;

b) with respect to a Party, any strike, work to rule, go-slow, or other labour disturbance affecting solely the employees or workforce of that Party and/or its Affiliates and/or their respective agents or contractors.

11. DEFAULT

11.1. Definition of Default

A Party shall be in Default where:

11.1.1. it fails to pay any amount due under this Agreement when such payment becomes due and payable, which is not remedied within [ten (10) days] of written notice from the other Party;

11.1.2. it is in material breach of any provision of this Agreement or any Licence or permit required to be held or complied with by such Party, which is not remedied within [thirty (30) days] of written notice from the other Party or such longer period as the Parties may in good faith agree;

11.1.3. It becomes unlawful for the Party to comply with any of its material obligations under this Agreement, except where such unlawfulness arises from a Change in Law that would constitute a Force Majeure Event under Clause 10 or would trigger the Change in Law Protection under Clause 10.4;

11.1.4. It suspends or ceases to carry on all or a material part of its business that is necessary for the performance of its obligations under this Agreement;

11.1.5. The Party becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files any petition or answer seeking any reorganisation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator;

11.1.6. A Party that is required to hold a Licence has its Licence lawfully revoked, suspended, or materially amended in a manner that prevents or materially impairs the Party's ability to perform its material obligations under this Agreement, and such revocation, suspension of amendment is not reversed within [thirty (30) days].

11.2. Notification of Default

Each Party shall notify the other Party as soon as reasonably practicable upon becoming aware of any circumstance that may give rise to a Default, and in any event within five (5) Business Days of the occurrence of a Default.

12. TERMINATION AND SUSPENSION

12.1. Termination Events:

This Agreement may be terminated in accordance with Clause 13 in any of the following circumstances:

a) the Market Participant becomes insolvent, no longer qualifies to be a Market Participant;
b) a Default occurs in respect of a Party; or
c) a Force Majeure Event continues for longer than six (6) months and the Parties fail to reach a mutually satisfactory solution as provided in Clause 10.6.

12.2. Suspension Event:

a) a) Where a Default occurs in respect of a Market Participant, the Market Operator Unit may, with the written approval of ERB, issue a Suspension Order in respect of the defaulting Party suspending or restricting all or any of the Participant's rights to participate in the Market;
b) b) The Market Participant's rights to participate in the Open Access Market shall also be suspended for any period during which its Licence is suspended by the ERB.
c) c) Where the Market Operator Unit issues a Suspension Order, the Market Operator Unit shall at the same time send a copy of the Suspension Order to the ERB, the System Operator, the relevant Regional Operator and publish the Suspension Order.
d) d) Subject to the activation of step in rights of lenders to a Participant, The Market Operator Unit shall, while a Suspension Order is in place, be entitled to do any act, matter or thing to give effect to the Suspension Order including, without limitation:

(i) rejecting any Offer Data submitted by the relevant Party;

(ii) netting-off any amount owed by the relevant Participant against the payment of any amounts otherwise due to that Participant under the Market Guidelines; or

(iii) requesting ERB and System Operators or any other Party to take such measures as the Market Operator Unit, acting reasonably, decides are appropriate to give effect to the Suspension Order.

e) The Market Operator Unit shall remove a Suspension Order if the relevant Party remedies the matter or matters giving rise to the Suspension Order, or the circumstances giving rise to the Suspension Order no longer apply

13. TERMINATION PROCEDURE.

13.1. Where any Termination Event, Default or Suspension occurs and is continuing, the non-defaulting Party may deliver a notice ("Notice of Intent to Terminate") to the defaulting Party, which notice shall specify in reasonable detail the Termination Event or Default giving rise to the Notice of Intent to Terminate and a cure period during which such Termination Event or Default shall be remedied. Such cure period shall be not less than thirty (30) Business Days from the date on which the Termination Event or Default first occurred.

13.2 Where the Market Participant has notified the System Operator in writing of lender step-in rights, the cure period shall be extended by an additional sixty (60) Business Days to allow the lender to exercise step-in rights, and the System Operator shall provide the lender with copies of all notices relating to the Default, Suspension or Termination Event.

13.3. Subject to Clause 13.2, in the event that the defaulting Party fails to remedy the Termination Event or Default within the prescribed period following its receipt of a Notice of Intent to Terminate, the non-defaulting Party may terminate this Agreement by giving written notice to the defaulting party.

13.4 No Party may issue a Notice of Intent to Terminate unless it has complied with the applicable termination procedures set out in this Clause 13.

13.5 All notices of termination shall also be reported to the System Operator and the Energy Regulatory Board**Error! Reference source not found.**

14. CONSEQUENCES OF TERMINATION

14.1 Cessation of Rights

Upon termination of this Agreement, the Market Participant's right to participate in the Open Access Market shall cease, save for the purpose of fulfilling any outstanding obligations or settling any payments that accrued prior to termination.

14.2. Lender Step-In Rights: W

Where the System Operator has issued a termination notice and the Market Participant has provided written notice to the System Operator of lender step-in rights in connection with financing arrangements, the following provisions shall apply:

a) The System Operator shall not have the obligation to enter into a separate direct agreement with the lenders of the Market Participant

b) The System Operator shall provide copies of all notices of Default or Termination Events to the lender simultaneously with service on the Market Participant;

c) During any extended cure period granted to lenders, the lender may exercise step-in rights to cure the Default or Termination Event either directly or through the appointment of a substitute participant;

d) Any substitute participant appointed by a lender must meet the eligibility criteria for Market Participants and obtain any required Licences within ninety (90) Business Days of appointment;

e) The System Operator's consent to assignment to a substitute participant appointed by a lender shall not be unreasonably withheld, provided the substitute participant meets all eligibility requirements and assumes all obligations under this Agreement;

f) The lender's step-in rights shall be limited to curing Defaults or Termination Events and shall not extend to day-to-day operational matters unless a substitute participant has been appointed and approved in accordance with this Clause.

14.2. Accrued Rights and Obligations

Termination shall not affect the accrued rights or obligations of any Party which arose out of or which relate to any act or omission prior to the date of termination, including:

a) payment of any amount which was or becomes payable under this Agreement in respect of any period before the date of termination (including in relation to any Dispute regarding an event before the termination even if the

Notice of Dispute is given after the date of termination); and

b) any liability arising from a breach of this Agreement that occurred prior to termination.

14.3. Post-Termination Liability Period

The Market Participant shall remain liable after termination for any breach of this Agreement that occurred prior to termination for a period of three (3) years after the date of termination, or any longer period specified under applicable Laws of Zambia.

15. NOTICES

15.1 Form of Notice: Any notice required to be given under this Agreement shall be in writing in English and delivered by email, registered post, or through the System Operator's online portal to the addresses specified in Schedule 2 (Notice Details).

15.2 **Deemed Receipt**:

A notice shall be deemed to have been received:

a) if sent by email, at the time of transmission (provided that no bounce-back message is received);

b) if sent by registered post, on the fifth (5th) Business Day after posting;

c) if posted on the System Operator's official portal, upon confirmation of posting being sent to the Market Participant's designated email address.

16. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws of Zambia.

17. JOINT VENTURES AND CONSORTIUM

If a Market Participant is a joint venture or consortium, all parties to the joint venture or consortium shall be jointly and severally liable to the System Operator for the fulfilment of the provisions of this Agreement and shall designate one party to act as a leader with authority to bind the joint venture or consortium. The Market Participant may change the party designated to act as leader by giving thirty (30) Business Days' written notice to the System Operator.

18. **ANTI-BRIBERY, CORRUPTION, SANCTIONS REPRESENTATIONS AND PUBLIC AUDIT**

Anti-Bribery

18.1 Neither the Market Participant nor any of its respective subsidiaries or affiliates, nor any director, officer, agent, employee or other person associated with or acting on behalf of the Market Participant or any of its subsidiaries or affiliates, has used:

a) any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to any activity,

b) made any direct or indirect unlawful payment to any of the System Operator's employee, director, officer, agent, employee or other person associated with or acting on behalf of the System Operator or any public officer or any employee or official of the Government of the Republic of Zambia,

c) violated or is in violation of any provision of the Anti-Corruption Act 2012, or any applicable law on combating bribery or any other similar law of any other jurisdiction in which the Market Participant operates its business, including, in each case, the rules and regulations thereunder,

d) taken, is currently taking or will take any action in furtherance of an offer, payment, gift or anything else of value, directly or indirectly, to any person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage; or

e) otherwise made any bribe, rebate, payoff, influence payment, unlawful kickback or other unlawful payment. The Market Participant will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with the laws referred to in paragraph (c) above and with this representation and warranty. None of the Market Participant's officers, servants, agents or other persons associated with the Market Participant will directly or indirectly use the proceeds of this Agreement to contribute or otherwise make available such proceeds to any person or entity for the purpose of financing or facilitating any activity that would violate the laws and regulations referred to in paragraph (c) above.

18.2. Corrupt and Fraudulent Practices

I. The Parties and their representatives shall observe the highest standards of ethics during the execution of this Agreement.

II. Any Party may terminate this Agreement if it determines that corrupt, fraudulent, collusive, coercive or obstructive practices were engaged in by the other Party or its representatives during the execution of this Agreement.

III. For the purposes of this Clause:

"Corrupt practice" means the accepting, obtaining, offering, giving, receiving or soliciting promising, directly or indirectly, of a gratification by way of bribe, personal the temptation, inducement, or the misuse of office or offering of anything of value for advantage or benefit of oneself and another person or to influence improperly the actions of a Party in the execution of this Agreement.

"Fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Party to obtain a financial or other benefit or to avoid an obligation.

"Collusive practice" means an arrangement between two or more parties designed to achieve an improper, corrupt purpose, including to influence improperly the actions of another Party.

“Coercive” practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any Party or the property of the Party to influence improperly the actions of a Party; This includes the performance or abstaining from performing acts in a Party’s capacity as a Market Participant, System Operator or MOU and the expedition, delay, hindrance, prevention of the performance of any act or providing assistance, favours to or hindering, delaying of any person in the transaction of any business in relation to this Agreement.

“Obstructive Practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements, accepting, obtaining or agreeing to accept or attempting to obtain offers or give a gratification to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing, intimidating or causing to abandon or cease to proceed any Party to prevent them from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

18.3 Money Laundering

The operations of the Market Participant are and have been conducted at all times in compliance with all applicable financial record keeping and reporting requirements, anti-terrorist financing legislation and money laundering statutes of all applicable jurisdictions and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, “Money Laundering Laws”); the Market Participant has in place policies and procedures reasonably designed to ensure that its and its subsidiaries operations will continue to be conducted in compliance with all applicable Money Laundering Laws and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Market Participant or any of its respective subsidiaries with respect to Money Laundering Laws is pending or, to the best knowledge of the Market Participant threatened.

19. MISCELLANEOUS

19.1. Entire Agreement: This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

19.2. No Partnership: Nothing in this Agreement shall constitute a partnership or joint venture between the Parties.

19.3. Assignment: This Agreement shall not be assigned (which, for the purposes of this Agreement shall mean a novation or transfer of rights and/or obligations hereunder) by any Party without the prior written consent of the other Party. Notwithstanding the foregoing, the System Operator shall not unreasonably withhold, delay or impose conditions on its consent to the Market Participant's assignment of this Agreement. The Market Participant may provide security interests over this Agreement to lenders without the System Operator's consent, provided that the Market Participant gives the System Operator written notice of such security interest within thirty (30) Business Days.

19.4. A Market Participant may assign this Agreement to an affiliate:

a) to which its licence has been transferred with the approval of ERB; or

b) in the case of a Contestable Consumer, to an entity that has registered with the System Operator;

19.5 Notwithstanding Clause 19.3, the System Operator may assign or novate its rights and obligations under this Agreement to a successor entity created by a change to the Governing Documents.

19.6. Severability:

If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

19.7. Survival:

The performance, expiration or termination of this Agreement shall not release either Party from any liabilities or obligations which remain to be performed or by their nature are intended to survive such performance, expiration or termination. The following clauses shall survive termination of this Agreement: Clauses 6 (Confidentiality), 9 (Dispute Resolution), 14 (Consequences of Termination), and 16 (Governing Law).

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

SIGNED for and on behalf of:
MARKET PARTICIPANT:

…………………………………...

Name:

Title:

Date:
in the presence of:

……………………………………….
Witness Name:
Occupation:
Address:

SIGNED by for and on behalf of:
SYSTEM OPERATOR

…………………………………………….

Name:

Title:

Date:

in the presence of:

……………………………………….

Witness Name:

Occupation:

Address:

SCHEDULE 2

NOTICE DETAILS

The Market Participant

Name:

Address:

Attention:

Email:

Portal Username:

The System Operator

Address: [Address of System Operator]

Attention: The Chief Executive Officer

Email: [MO Email Address]

Portal: [URL of MO Portal]